

In the High Court of Judicature at Madras

Dated: 21/04/2004

Coram

The Honourable Mr.Justice V.KANAGARAJ
and
The Honourable Mrs.Justice R.BANUMATHI

Criminal Appeal No.11 of 1997

Muniraj ..Appellant

-Vs-

State
rep.by Inspector of Police,
Jolarpettai Police Station,
North Arcot Ambedkar District. ..Respondent

Criminal Appeal preferred under Section 374 of Criminal Procedure
Code against the judgment dated 08.11.1996 made in S.C.No.79 of 1996
on the file of Principal Sessions Court, Vellore.

!For Appellant : Mr.K.S.Rajagopalan

^For Respondent : Mr.E.Raja,
Additional Public Prosecutor.

:J U D G M E N T

(Judgment of the Court was delivered by R.BANUMATHI, J.,)

Appellant is the accused in S.C.79/1996 on the file of Principal
Sessions Court, Vellore. By the Judgment dated 08.11.1996, the
Principal Sessions Judge, Vellore convicted the Appellant / accused under
Sec.302 IPC and sentenced him to undergo Imprisonment for Life.

2. This is a case of father-in-law killing the son-in-law due to
differences between his daughter and the deceased. Case of the
Prosecution could briefly be stated thus:
Sulochana - daughter of the deceased was given in marriage to the
accused about six months prior to the occurrence. After marriage, the
deceased Narayanan and Sulochana were living with P.W.1 (mother of
the deceased) in Agaram Village. Sulochana used to go to cooly work. It is alleged that the deceased
used to demand the mo
wife which she was earning and there used to be frequent quarrel
between them. Due to such quarrel, Sulochana frequently used to go to her
parents house at Athanavoor Village in Elagiri. There used to be

Panchayat held to bring back Sulochana to the house of the deceased.

3. On 06.11.1995 also Sulochana, went to her parents house at Athanavoor Village in Elagiri. On 09.11.1995, P.W.1 - mother of the deceased, P.W.2 - Panchayat President of Madavalam, P.W.3 - a resident of Agaram Village went to Athanavoor Village to conven
bring back Sulochana, wife of the deceased. They reached Athanavoor Village at about 3.15 PM. P.Ws.2 and 3 went to the laundry shop of the accused in the bus stop. P.W.1 and her son Narayanan went near the tailor shop of P.W.4 and P.W.4 asked them to sit in hi
that time, P.Ws.2 and 3 were talking with the accused and the accused came near P.W.1 and Narayanan. Questioning Narayanan as to why he had driven away his daughter, the accused abused them in f
accused took one wooden stick - M.O.1 from the lane between his laundry shop and tailor shop of P.W.4 and beat Narayanan on his left side head. Narayanan immediately fell down and there was bleedi
beat Narayanan with M.O.1 wooden stick on his back and Narayanan again fell down and became unconscious. With the help of one School Father / Priest, injured Narayanan was taken to Tirupathur Gov
Hospital in a jeep.

4. On receipt of intimation from the hospital, P.W.9 Head Constable recorded Ex.P.1 - Statement from P.W.1. On the basis of Ex.P-1, a case was registered in Crime No. 1131/1995 unde
Ex.P.12 - First Information Report.

5. P.W.7 attached to Tirupathur Government Hospital examined Narayanan on 09.11.1995 at 5.10 PM and found on him the following injury;
Lacerated injury over the left side of scalp in 6 x 2 cm.bone depth. Bleeding was present in the wound.
Ex.P-7 is the wound Certificate. For better management and treatment, Narayanan was referred to Government Hospital, Vellore.

6. On his way to the hospital near Jolarpettai, Narayanan died.
The body of Narayanan was brought back to Thirupathur Government Hospital. On the basis of Ex.P.9 - Death Intimation, case was altered into Sec.302 IPC under Ex.P.19 - Express Report.

7. P.W.15 - Inspector took up investigation. Inquest was held on the body of deceased Narayanan. Ex.P-20 is the Inquest Report. On the requisition from the Inspector of Police - P.W.15, P.W.8 - Dr.A. Parimala conducted autopsy and noted sutured wound on the left Parietal region and also abrasion on the left side of back.
noted the corresponding fracture injuries to the skull as under:
Skull fractured below the wound and fracture extending the parietal bone to the opposite side of parietal bone crossing the midline to a length of 15 cm, half circle in shape.
On opening the skull parietal lobe of the brain found contused.
Dark reddish colour Intra Cranial bleeding about 100 ml.(both in the form of liquid and clotted form) present.

8. P.W.8 opined that the deceased died of head injury resulting in fracture of skull, injury to brain and Intra Cran

5 examined the witnesses and prepared Ex.P.21 - Rough Sketch and Ex.

P.2 - Observation Mahazar. P.W.16 took up further investigation and after completing the investigation, filed the charge sheet against the accused for the offence under Sec.302 IPC.

9. To substantiate the charges against the accused, in the trial court, Prosecution has examined P.Ws.1 to 16. Exs.P-1 to P-21 were marked. M.Os.1 to 8 were produced by the Prosecution. The accused was questioned under Sec.313 of Crl.P.C.about the incriminating circumstances and evidence. Denying the occurrence, the accused stated that on 09.11.1995 - 3.00 PM P.W.1 and the deceased came to Athanavoor Village and quarreled with him and the villagers mediated the matter and during such time, his son-in-law fell down and sustained injuries on his head. The accused has denied the presence of P.Ws.2 and 3. The accused has also denied the arrest and seizure of M.O.1 - firewood stick at his instance.

10. Upon consideration of evidence, the learned Sessions Judge found that there was no cordial relationship between the daughter of the accused and her husband Narayanan. Accepting the evidence to 3 and finding that the accused had the intention of committing the murder of his son-in-law Narayanan, the learned Session in para (1).

11. Assailing the conviction and the sentence of imprisonment, the learned counsel for the Appellant / accused submit

presence. It is the further contention that in the light of hostility of independent witness - P.W.4 tailor, who is running the tailor shop nearby, the trial court ought to have disbelieved the Prosecution case. It is further submitted that in any event, the attack on Narayanan is only a single blow by M.O.1 firewood stick which was lying there, which the accused incidentally picked up, and the conviction under Sec.302 be sustained and prayed for modification of the conviction under Sec.304(II) IPC and prayed for leniency in the sentence.

12. Submitting that the trial court rightly accepted the evidence of P.Ws.1 to 3, the learned Additional Public Prosecutor submitted that the hostility of P.W.4 would not in any way undermine the Prosecution case. However, the learned Additional Public Prosecutor fairly conceded that the offence would fall only under sec.304 (II) IPC and not under Sec.302 IPC.

13. In our considered view, the main point arising for determination in this Appeal is Whether the conviction under Sec.302 IPC is sustainable or to be altered for the lesser offence under Sec.304 (II) IPC ?

14. Like all the earthly fathers, accused also gave his daughter Sulochana with the fond hope that Sulochana would live happily with the deceased. But after marriage, the family of the accused was only to see quarrel and misunderstanding between the deceased and Sulochana. Within short time of marriage, Sulochana frequently went to her parents house, regarding which there was Panchayat and Sulochana was brought back to Agaram Village to the house of the deceased. Evidence of P.Ws.1 to 3 is consistent as to such Panchayat held that there was no cordiality between the husband and wife. P.Ws.1 to 3 would speak about such quarrel and also about the pri

15. Due to quarrel ensued on 06.11.1995 also, Sulochana went to her parents house at Athanavoor Village in Elagiri. On 09.11.1995 P.W.1 mother of the accused, P.w.2 □ Panchayat President, M Panchayat and P.W.3 □ a resident of Agaram Village went to Athanavoor Village at about 3.15 PM. The accused is running the laundry shop in the bus stop of Athanavoor Village. P.Ws.2 and 3 were talking to the accused in his laundry shop; while so, P.W.1 and her son Narayanan went to the tailor shop of P.W.4, who asked them to sit. At that time, the accused came near the tailor shop and questioned Naray

, accused enraged had picked up M.O.1 firewood stick lying in the lane between his shop and the tailor shop of P.W.4 and beat Narayanan on his left side head. Narayanan immediately fell down with bleeding from his nose and mouth. When Narayanan attempted to get up, the accused again Narayanan with M.O.1 □ firewood stick on his back and Narayanan again fell down and became unconscious. P.Ws. 1 to 3 have consistently spoken about their reaching Athanavoor Village and the attack on Narayanan.

16. The learned counsel for the Appellant / accused would attack the evidence of P.W.1 contending that she is the mother of the deceased and is an interested witness and that her evidence cannot form the basis for conviction. In our view, this contention does not merit acceptance. De hors the evidence of P.W.1, P.Ws.2 and 3 have clearly spoken about the occurrence and the accused beating deceased with M.O.1. P.W.2 is the Panchayat President of Agaram Village. P.W.3 is the neighbour of the family of P.W.1. It is quite natural for them to have accompanied P.W.1 on 09.11.1995 to mediate between the couple. By careful reading of the evidence of P.Ws.2 and 3, w

17. By careful reading of evidence of P.Ws.1 to 3, we find their evidence sturdy and unimpeachable in character. Even the learned counsel for the Appellant could not point out any contradiction in their evidence undermining their version. Evidence of P.Ws.1 to 3 stands amply corroborated by medical evidence and the objective finding during investigation. Considering the evidence of P.Ws.1 to

18. Blow on the head with M.O.1 firewood stick caused parietal bone fracture, which proved fatal. The second blow on the back has only caused the abrasion on the

left side of back. Pointi

manner of attack and the injuries, the learned counsel for the Appellant contended that the accused did not have the intention to commit the murder of his son-in-law. It is contended that it is a case of single blow causing head injury, no intention could be attributed to the Appellant on that score and that conviction under Sec.302 IPC is unsustainable.

19. The learned Additional Public Prosecutor submitted that there was deep feeling of enmity in the mind of the accused, due to which, he has violently hit the deceased on the vital part of head. However the learned Additional Public Prosecutor submitted that the accused caused the violent blow in a heat of passion the conviction could be altered into Sec.304(II) IPC.

20. Considering the use of M.O.1 firewood stick and two blows caused on the deceased, the question that arises for our consideration is as to what offence can be said to have been committed

21. Only six months prior to the occurrence, Sulochana, daughter of the accused was given in marriage to the deceased. Due to differences with the deceased, Sulochana did not lead a happy life and frequently left for her parents house. On 06.11.1995 also she went to her parents house due to misunderstanding with the deceased mother-in-law. We could realise the pain and agony caused in the mind of the accused's father of the girl. He had given his marriage to the deceased with fond hope that he would keep her well and lead a happy life. Seeing his daughter again and again coming back to the house like "a ball hit against the wall", it would be a serious concern in the mind of the accused.

22. In the context of Indian society, particularly in rural areas, separation between husband and wife is generally a girl is being termed "thHhbt; o@/ Family members and father would normally be questioned by the villagers the reason for the non-living of the daughter with her husband. This is all the more the accused is running the laundry shop in the bus stop itself in Athanavoor Village. It would almost be an impossibility for others to unravel the pain and agony and concern that would have been caused in the mind of the accused.

23. Seldom there is any action without impelling factor which remains undiscoverable. Such anger is a natural basic emotion in the mind of an individual. Such anger journeys from stimulus and triggered into action as seen from the following wordy conversation. On seeing his son-in-law, the accused questioned

(VERNACULAR OMITTED)

In that spur of the moment, the accused picked up M.O.1 firewood lying in between the shop and the tailor shop of P.W.4 and beat the

deceased on his left side of the head. Narayanan fell down and when he attempted to get up, the accused again hit a blow on the backside. The first blow has caused lacerated injury on the left part of the scalp. On dissection of wound No.1, it was noted, Skull fractured below the wound and fracture extending the parietal bone to the opposite side of parietal bone crossing the midline to a length of 15 cm, half circle in shape. On opening the skull parietal lobe of the brain found contused. Dark reddish colour Intra Cranial bleeding about 100 ml.(both in the form of liquid and clotted form) present. The deceased died of head injury resulting in fracture of skull, injury to brain and Intra Cranial bleeding. Considering the nature of the injury caused, it is to be seen whether criminal intention in causing murder of the deceased could be attributed to the accused.

24. Intention to be gathered from the surrounding circumstances. It depends upon the facts and circumstances of each case whether the accused had the intention to cause death or knew in the circumstances that his act was going to cause death. The nature of the act used, the intention expressed by the accused at the time of the act, the motive for commission of the offence, the nature and the injuries and the severity of the blow or blows are important factors are to be taken into consideration in arriving at a finding whether the accused had the necessary intention.

25. From Ex.P.6 [Seizure Mahazar, we find the length of M.O.1 [firewood is 34", with a circumference of 5". By hitting the blow, the accused definitely would not have intended to cause th

.4 and from the manner of attack, we find that the accused has neither acted violently nor ferociously. We are of the view that the act of the accused would not fall within Sec.302 IPC, but within the exception Clause "fight" and the offence is punishable under Sec.304 (II) IPC.

26. In considering the question of sentence, the manner in which the offence was committed, the weapon used, absence of any violence, situs of attack and nature of injury caused are the factors to be taken into consideration. At the time of trial in 1996, the accused was aged fifty years. Keeping in view the impelling factor for causing the injury to the deceased and the weapon used, we are of the view that three years sentence of imprisonment would meet the ends of justice.

27. Therefore, the judgment of the Principal Sessions Court, Vellore in S.C.No.79/1996 (dated 08.11.1996) convicting the Appellant / accused under Sec.302 IPC is modified as one for conviction under Sec.304(II) IPC. For the conviction under Sec.304(II) IPC, the accused is sentenced to undergo Rigorous Imprisonment for a period of three years. The period of sentence already undergone by him is ordered to be set off against the sentence imposed. Criminal Appeal

28. The trial court is directed to take immediate steps for securing the Accused and to commit him to prison for serving the remaining period of sentence.

Index:Yes. (V.K.,J) (R.B.I.,J)

Internet : Yes. 21.04.2004

Note to Office:

Registry is directed to send a copy of this Judgment to the lower court forthwith.

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To

1. The Principal Sessions Judge,
Vellore.

2. The District Collector,
Vellore District,
Vellore.

3. The Superintendent,
Central Prison,
Vellore.

4. The Inspector of Police,
Jolarpettai Police Station,
Vellore District.

5. The Public Prosecutor,
High Court, Madras.

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